

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NANCY DENARDI,

Plaintiff,

-against-

DRA IMAGING, P.C. and IMAGING SUPPORT
SERVICES, LLC,

Defendants.

**DECLARATION IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMUARY JUDGMENT**

07 CIV. 5794 (MGC)

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I, **STEPHANIE L. BURNS**, an attorney duly admitted to practice before the Courts of the State of New York and before the United States District Court, Southern District of New York, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am a member of the law firm of Keane & Beane, P.C., which is attorney for Defendants DRA Imaging, P.C. ("DRA") and Imaging Support Services, LLC ("ISS") (collectively the "Defendants") in this action. I make this Declaration for the purpose of submitting to this Court documentary evidence, as introduced below, in support of Defendants' motion *in limine* seeking an Order, pursuant to Rules 402 and 403 of the Federal Rules of Evidence, precluding the admission of any testimony or documents concerning (a) anti-Semitic and/or racist comments purportedly made by any employee(s) of the Billing Department and (b) any counseling provided to or disciplinary action taken with regard to any employee of the Billing Department based upon performance deficiencies.

2. A true copy of the Complaint in this action is annexed hereto as Exhibit "A".

3. On or about December 21, 2007, Defendants responded to Plaintiff's First Notice to Produce. As part of this response, the personnel file maintained by Defendants concerning

Plaintiff was produced. From this personnel file, a Notice and Proof of Claim Disability Benefits is annexed hereto as Exhibit "B", as bates stamped for production in this action. This document indicates Plaintiff's absence from work began on or about October 8, 2005. In addition, from Plaintiff's personnel file, typed notes dated May 9, 2006 concerning events on May 5, 2006 and May 8, 2006 are annexed hereto as Exhibit "C", as bates stamped for production in this action.

4. The deposition of Plaintiff commenced on March 20, 2008 and continued on April 22, 2008. Relevant excerpts from Plaintiff's deposition transcript are annexed hereto in Exhibit "D".

5. The deposition of Virginia Barkanyi commenced on June 17, 2008 and continued on July 18, 2008. Relevant excerpts from the transcript of Ms. Barkanyi's deposition are annexed hereto in Exhibit "E".

6. The deposition of Mark Newton was conducted on June 20, 2008. Relevant excerpts from the transcript of Mr. Newton's deposition are annexed hereto in Exhibit "F".

7. The deposition of Heather DeNardi was conducted on July 18, 2008. Relevant excerpts from the transcript of her deposition are annexed hereto in Exhibit "G".

8. A letter dated June 18, 2008 from Plaintiff's counsel to Defendants' counsel requesting certain documents is annexed hereto as Exhibit "H". The responsive letter to Plaintiff's counsel from Defendants' counsel, dated July 15, 2008, as well as Exhibits "A" and "B" thereto, which are relevant to the instant motion *in limine*, are annexed hereto as Exhibits "I" (letter), "J" (Exh. A to the letter) and "K" (Exh. B to the letter), respectively.

9. A copy of the text of the Affidavit of Joseph Chiseri, duly sworn to on September 10, 2008, together with Exhibits "H" and "K" thereto, is annexed hereto as Exhibit "L". The Affidavit of Mr. Chiseri was submitted to the Court in support of Defendants' summary judgment motion.

10. A true copy of *Sanders v. Ritz-Carlton Hotel Co., LLC*, 2008 WL 4155635 (S.D.N.Y. Sept. 9, 2008) is annexed hereto as Exhibit "M".

Dated: White Plains, New York
September 17, 2008



STEPHANIE L. BURNS (SB 3467)

EXHIBITS TO BURNS DECLARATION	
EXHIBIT	DESCRIPTION
A	Complaint
B	Notice and Proof of Claim Disability Benefits
C	Typed notes dated May 9, 2006
D	Relevant excerpts from Plaintiff's deposition transcript
E	Relevant excerpts from the deposition transcript of Virginia Barkanyi
F	Relevant excerpts from the deposition transcript of Mark Newton
G	Relevant excerpts from the deposition transcript of Heather DeNardi
H	June 18, 2008 letter from Plaintiff's counsel to Defendants' counsel requesting certain documents
I	July 15, 2008 letter to Plaintiff's counsel from Defendants' counsel
J	Exhibit A to July 15, 2008 letter
K	Exhibit B to July 15, 2008 letter
L	Affidavit of Joseph Chiseri, duly sworn to on September 10, 2008, together with Exhibits "H" and "K" thereto
M	<i>Sanders v. Ritz-Carlton Hotel Co., LLC</i> , 2008 WL 4155635 (S.D.N.Y. Sept. 9, 2008)